

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CATHOLIC BENEFITS  
ASSOCIATION, LCA, *et al.*

Plaintiffs,

v.

ERIC D. HARGAN, in his official  
capacity as Acting Secretary,  
Department of Health and Human  
Services, *et al.*,

Defendants.

No. 5:14-cv-00240

No. 5:14-cv-00685

**DEFENDANTS' SUPPLEMENTAL BRIEF REGARDING  
PLAINTIFFS' MOTION FOR PERMANENT INJUNCTION**

Plaintiffs moved for a permanent injunction and declaratory relief against federal regulations that required them to offer coverage of contraceptive services (“the Mandate”) or to comply with an accommodation process whereby their employees would receive coverage through Plaintiffs’ health insurance issuer or third party administrator. *See CBA I*, ECF No. 161; *CBA II*, ECF No. 57. Defendants previously opposed the motion on the ground that Plaintiffs’ claims were moot in light of the defendant agencies’ issuance of interim final rules that exempt religious and moral objectors like Plaintiffs from the Mandate and the accommodation process. *See CBA I*, ECF No. 167; *CBA II*, ECF No. 63 (citing Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 47,792 (Oct. 13, 2017));

Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 47,838 (Oct. 13, 2017)).

On December 15, 2017, however, the district court in *Pennsylvania v. Trump*, No. 2:17-cv-04540-WB, ECF No. 60 (E.D. Pa.), preliminarily enjoined the defendant agencies from enforcing the new interim final rules. On December 21, 2017, the district court in *California v. Department of Health and Human Services*, No. 4:17-cv-05783-HSG, ECF No. 105 (N.D. Cal.), entered a preliminary injunction to the same effect.

In light of the *Pennsylvania* and *California* decisions, the Government is no longer advancing its mootness argument at this time. The Government also is not raising a substantive defense of the Mandate or the accommodation process with respect to Plaintiffs' Religious Freedom Restoration Act ("RFRA") challenge. As noted in the Government's opposition to Plaintiffs' motions for a preliminary injunction in *Pennsylvania* and *California*, the defendant agencies have concluded that requiring employers with sincerely held religious objections to comply with the Mandate or the accommodation process would violate RFRA.

The Government takes no position on whether permanent injunctive relief is appropriate in this case. The Government notes, however, that any injunction should be narrowly tailored to enjoin enforcement against CBA's Group II and Group III members that joined CBA as of the date any injunction is entered and that had not had an adverse ruling on the merits issued against them in another case involving the Mandate. The injunctions in *Pennsylvania* and *California* do not purport to interfere with this case or other existing litigation challenging the prior rules. *See* Opinion at 43, *Commonwealth of*

*Pennsylvania v. Trump et al.*, No. 17-4540 (E.D. Pa. Dec. 15, 2017) (“A preliminary injunction will maintain the status quo: those with exemptions or accommodations prior to October 6, 2017 will maintain their status, those with injunctions preventing enforcement of the Contraceptive Mandate will maintain their injunctions, but those with coverage will maintain their coverage as well.”); Order Granting Plaintiffs’ Motion for A Preliminary Injunction at 29, *California et al. v. Hargan et al.*, No. 17-05783 (N.D. Cal. Dec. 21, 2017) (“This nationwide injunction does not conflict with the plaintiff-specific injunctions issued by the courts in the *Zubik* cases or any other case.”).

Respectfully submitted this 22nd day of December, 2017,

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/s/ Elizabeth L. Kade  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2017, I electronically filed the foregoing using the Court's CM/ECF system, which sent notice of such filing to all parties.

/s/ Elizabeth L. Kade

ELIZABETH L. KADE